

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 41458
Docket No. MW-41656
12-3-NRAB-00003-100336**

The Third Division consisted of the regular members and in addition Referee Richard Mittenthal when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes Division -
(IBT Rail Conference
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(BNSF Railway Company (former Burlington
(Northern Railroad Company

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The discipline [removed from service on May 13, 2004 and withheld from service through June 15, 2004 and a Level S three (3) year probation period by letter dated June 15, 2004] imposed upon Mr. D. Jarombek for alleged violation of Rule 1.6 Conduct of the Maintenance of Way Operating Rules and General Notice No. 215 Violence in The Workplace Policy in connection with his alleged altercation which resulted in his personal injury in Grand Forks, North Dakota Section Headquarters on May 12, 2004 was arbitrary, capricious, on the basis of unproven charges and in violation of the Agreement (System File T-D-2782-W/11-04-0236 BNR).
- (2) As a consequence of the violation referred to in Part (1) above, Claimant D. Jarombek shall now ‘. . . be paid for his lost time, including any and all overtime paid to the position he was assigned to, any expenses lost and we also request that Mr. Jarombek be made whole for any and all benefits, and his record cleared of any reference or any mention of this investigation and of the discipline set forth in the June 15, 2004 letter from Hank Jeske, Division Engineer.”

FINDINGS:

The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee within the meaning of the Railway Labor Act, as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute were given due notice of hearing thereon.

This case was prompted by the Carrier's action in holding D. Jarombek out of service between May 13 and June 15, 2004 for his suspected violation of Operating Rule 1.6 and General Notice No. 215 Violence in the Workplace Policy. After the formal Hearing was completed, it imposed a 34-day disciplinary suspension on Jarombek to cover the period that he was out of service and placed him on probation for three years.

The facts are largely undisputed. Jarombek, a Truck Driver, was taking a break at 2:10 P.M. on May 12, 2004, sitting on a ten-foot bench chatting with another employee. As they talked, two other employees entered the room, first J. Peterson and then B. Oppegaard. It was widely known that Oppegaard had been a Crane Operator, who had recently been disqualified from such job, and he was very sensitive about the disqualification. This was, according to Oppegaard, a "hot button" issue for him. And Jarombek appears to have pressed that "button" by questioning Oppegaard about this lack of skill. Oppegaard felt that he was being ridiculed, became angry, walked over to the bench where Jarombek was sitting, and picked up the end of the bench furthest from where Jarombek was sitting. Jarombek fell to the ground and suffered an injury.

The Roadmaster learned of the incident the following day. A formal Investigation followed. As noted earlier, the Carrier held Oppegaard out of service pending completion of the formal Investigation. The Carrier ruled that he was guilty of the violations mentioned earlier and imposed a suspension to cover the period of time that he was off work and also placed him on probation. The Organization promptly protested the discipline. When the parties were unable to resolve their differences, the Organization appealed to arbitration. Jarombek did not return to work because of the

injury he had sustained. He was disabled apparently from performing his bargaining unit work.

Shortly before the parties submitted their Submissions to the Board, there were conversations between Jarombek and the Carrier about his disability claim. Those discussions resulted in an “Agreement Not To Mark Up/ Resignation” on February 12, 2008, the scope and significance of which can be appreciated from the following excerpts:

“In consideration of the settlement made with me [Jarombek] by BNSF Railway Company . . . for injuries sustained by me on or about May 12, 2004 . . . I, Dale Jarombek agree to never return or attempt to return to railroad work in any capacity with BNSF . . . because of the permanent injuries and disabilities I sustained In the event I attempt to return to duty, in any capacity, this will serve as and constitute my resignation and termination of employment relationship with said Railway Company

I hereby assert and agree that such sums paid to me are based upon representations of such permanent disability that will forever prohibit and incapacitate me from returning to any railroad employment and I . . . do hereby resign from the service of BNSF . . . and expressly release and relinquish . . . all my rights as an employee, including seniority, health and welfare, labor claims and other rights which may heretofore have accrued to me as an employee This resignation is absolute and unqualified and shall become effective immediately upon execution of this document. No acceptance on your [the Carrier’s] part is necessary.

I have read and understand the above Agreement Not To Mark Up/Resignation.” (Emphasis added)

Jarombek signed the Agreement on February 12, 2008. The Carrier’s signature was not necessary. There is no evidence that the Organization was a party to the Agreement or its negotiation.

The Carrier asserts that the above Agreement is grounds for the dismissal of this case. The Organization evidently disagrees, although there is no mention of this Agreement in its Submission to the Board.

It should be emphasized, at the outset, that the Organization's Submission does not request that Jarombek be returned to work. Rather, its claim is that he "be paid for his lost time [May 13, 2004 to June 15, 2004] including any and all overtime paid to the position he was assigned to [and] any expenses lost" and that "his record [be] cleared of any reference or any mention of the investigation and . . . the discipline"

However, it is perfectly clear from his Agreement with the Carrier that he resigned from his employment with the Carrier in February 2008 and "relinquished . . . all my rights as an employee, including labor claims and other rights" The Organization's argument involves a "labor claim" or "other rights" on Jarombek's behalf. He plainly understood (or should have understood) what he was relinquishing. Nothing in the record suggests that he was misled. He intentionally severed his employment relationship with the Carrier and he certainly had a right to surrender any "labor claim" he might have against the Carrier. There is no need here to evaluate the merit of his claim to backpay. In view of all of the foregoing, the instant claim is dismissed.

AWARD

Claim dismissed.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an Award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 16th day of October 2012.